

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3498 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHIKHUBHAI MEGHUBHA

Versus

SATUBHA @ JUVANSANG GULABSANG

Appearance:

1. Special Civil Application No. 3498 of 1986
MR RJ OZA for Petitioners
MR BM MANGUKIYA for Respondent No. 4
MR A.J.DESAI, ASSTT. GOVERNMENT PLEADER for
Respondent No. 5

CORAM : R.K.ABICHANDANI,J.
13th April, 1999.

ORAL ORDER:-

The petitioners seek to challenge the order of the Gujarat Revenue Tribunal dated 2.5.1986, rejecting the application of the petitioners for impleading them as parties in the Revision Application pending before the Tribunal.

2. According to the petitioners, they were claiming

interest in the property as the co-sharers with Takhatsing and therefore, they ought to have been joined as parties in the Revision Application. According to the petitioners, the suit land, for some unknown reasons, vested in the Government under the provisions of Section 6 of the Talukari Tonure Abolition Act. The husband of the respondent No.4 i.e. deceased Takhubha Agarsang, having come to know about the order of the Government, in his capacity as Manager of the suit land, filed Revenue Case No. 160 of 1959 under the provisions of Section 37(2) of the Bombay Land Revenue Code. According to the petitioners, the land was subsequently released from the control of the Government, by the order of the Mahalkari, Ghogha, in Revenue Case No. 160 of 1959 passed on 28.10.1959. It is the case of the petitioners that since the Manager was acting contrary to the interest of the co-sharers, Special Civil Suit No. 85 of 1983 was filed by the petitioners Nos. 1, 2 and 3 in the Court of learned Civil Judge (Senior Division), Bhavnagar, for a declaration and permanent injunction restraining the respondent No.4 from transferring the land in question. The application for interim injunction was dismissed by the trial Court, against which Appeal from Order No. 224 of 1983 was filed, which is pending. In the Appeal from Order, a Civil Application being C.A No. 3826 of 1983 was also filed, in which interim relief was granted. According to the petitioners, in September, 1985, they came to know about the proceedings pending against the respondent No.4 in the Revenue Tribunal and on enquiry it transpired that the respondents Nos. 1 to 3 have claimed tenancy rights on the suit land of which the petitioners are also co-owners. They therefore, made an application on 16.10.1985 before the Revenue Tribunal and put forth documentary evidence in support of their claim as co-owners. The Tribunal found that the application was made at a belated stage and that they were not entitled to be joined as parties in the Revision Application.

The learned Counsel appearing for the petitioners contended that the petitioners had sufficient interest to enable them to be joined as parties in the Revision Application.

It appears that the tenancy proceedings were going on since long. The Deputy Collector, on 24.1.1977, by his order on Appeal, had remanded the proceedings. Thereafter, the Mahalkari decided the matter on 27.1.1978 holding that the original applicants were not tenants. The appeal which was filed against that order was dismissed by the Deputy Collector on 21.12.1978, against which a Revision was preferred before the Tribunal, which

was dismissed for default. Thereafter, it was restored. The Tribunal noted that the application for being impleaded as parties was given after a lapse of ten years and that it was obviously given to prolong the matter. The Tribunal also took note of the fact that the petitioners were not able to show the nature of their interest involved in the matter. Moreover, the original applicants had claimed to be the tenants and no question of ownership was required to be decided. The Tribunal found that pedigree produced before it was not properly established. The petitioners had never tried to be impleaded as parties in the earlier proceedings. It was held that looking to their conduct, there was reason to believe that it was not a bonafide attempt on the part of the petitioners in seeking to be impleaded as parties in the Revision Application. If there were other co-sharers in the land, steps would have been taken at proper time and, it was held that, attempt was being made only to prolong the matter.

The impugned decision of the Tribunal has been made in lawful exercise of its jurisdiction. The Tribunal has not committed any error apparent on the face of the record and has based its decision on the material before it. There is no valid ground for interfering with the impugned decision. It is obvious that the petitioners' rights have been agitated in a Suit, from which an Appeal from Order has also been filed. Their ownership rights cannot be finally decided in the proceedings before the Tribunal and they were not parties in the original and appellate proceedings. The Tribunal therefore, rightly held that they were not entitled to be joined as parties in the Revision Application without demonstrating their interest in the proceedings. Their ownership dispute is already pending before the Civil Court and their rights would ultimately depend upon the outcome of those proceedings. In this view of the matter, the present petition is rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

*/Mohandas